## REMARKS

This Request for Continued Examination is intended as a full and complete response to the Final Office Action dated January 26, 2009, having a shortened statutory period for response extended two months to expire on June 26, 2009. Please reconsider the claims pending in the application for reasons discussed below.

In the specification, two paragraphs have been added discussing features found in US Provisional Application number 60/465,663 and the copending non-provisional application claiming priority therefrom, both of which are incorporated by reference into the instant application.

Claims 12-23, 42, and 45-52 remain pending in the application upon entry of this Response. Claims 20 and 22 have been cancelled by the Applicant without prejudice. New claims 45-52 have been added by the Applicant.

### Claim Rejections under 35 USC § 103

Claims 12-17, 19, 21-23, and 42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Peerman et al.* (U.S. Patent no. 4,543,369, hereinafter *Peerman*). The Applicant respectfully responds.

The Applicant has amended claim 12 to recite that at least one of the amine or alcohol groups of the initiator has been reacted with an alkoxylating agent so that initiator has a number average molecular weight of at least about 625. Support for the alkoxylation can be found for example on page 8, line 31 – page 9, line 7. Additionally, on page 21, lines 4-6, CEI-625 is described as a glycerol initiated EO polyol with a number average molecular weight of 625.

Claim 12 recites subject matter not disclosed by *Peerman*. When determining whether a claim is obvious, an examiner must make "a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art." *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, "obviousness requires a suggestion of all limitations in a claim." *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (*citing In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Moreover, as the Supreme Court recently stated, "*there must be some*

*articulated reasoning* with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added)).

In the present case, *Peerman* does not teach, show, suggest, or otherwise render obvious a vegetable oil based polyol where the initiator is a polyol, polyamine or aminoalcohol initiator, wherein at least one of the amine or alcohol groups of the initiator has been reacted with an alkoxylating agent so that initiator has a number average molecular weight of at least about 625.

Because *Peerman* does not disclose an initiator as recited in Applicants claim 12, and because there is no articulated reasoning with some rational underpinning to support the legal conclusion of obviousness of such an initiator, *Peerman* fails to teach, show, suggest, or otherwise render obvious claim 12 and claims dependent therefrom. Withdrawal of the rejection is respectfully requested.

Claim 18 stands rejected under 35 U.S.C. § 102(b) as being anticipated by *Peerman* as applied to claims 12, 16, and 17, and further in view of *Rogier* (U.S. Patent no. 4,216,344). The Applicant respectfully responds.

*Peerman* in view of *Rogier* fails do cure the deficiencies of *Peerman* to anticipate or render obvious claim 12 as discussed above. Neither *Peermman* nor *Rogier* disclose a vegetable oil based polyol where the initiator is a polyol, polyamine or aminoalcohol initiator, wherein at least one of the amine or alcohol groups of the initiator has been reacted with an alkoxylating agent so that initiator has a number average molecular weight of at least about 625. Because *Peerman* and *Rogier* fail to disclose or render obvious each and every element of claim 12, and therefore also claim 18 dependent therefrom, the Applicant respectfully requests the withdrawal of the rejection.

Claim 20 stands rejected under 35 U.S.C. § 102(b) as being anticipated by *Peerman* as applied to claims 12 and 19, and further in view of *Rogier*. The Applicant respectfully responds.

*Peerman* in view of *Rogier* fails do cure the deficiencies of *Peerman* to anticipate or render obvious claim 12 as discussed above. Neither *Peermman* nor *Rogier* disclose a vegetable oil based polyol where the initiator is a polyol, polyamine or aminoalcohol initiator, wherein at least one of the amine or alcohol groups of the initiator has been reacted with an alkoxylating agent so that initiator has a number average molecular weight of at least about 625. Because *Peerman* and *Rogier* fail to disclose each and every element of claim 20, and therefore also claim 20 dependent therefrom, the Applicant respectfully requests the withdrawal of the rejection.

**Double Patenting**

Claims 12 stands provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of copending Application No. 11/665,097 (hereinafter '097). The Applicant respectfully traverses the rejection.

Claim 12 of Applicants present application is patentably distinct from claim 3 of Applicants '097 application. Claim 12 of the present application recites a vegetable oil based polyol while claim 3 of '097 recites a dispersion of polymer particles. The polymer particles of '097 are a polyurethane made by reacting, *inter alia*, a polyisocyanate and a hydroxymehtyl-containing polyester polyol derived from a fatty acid. Because claim 12 of the present application recites a polyol and claim 3 of '097 recites a dispersion of polymer particles the two claims are patentably distinct.

The Examiner asserts in her rejection of the explanation above that because the dispersion of '097 comprises the polyol described in instant claim 12, the subject matter of instant claim 12 is not patentably distinct over claim 3 of '097. The Applicant respectfully disagrees. Any obviousness-type double patenting rejection should make clear: (A) The differences between the inventions defined by the conflicting claims - a claim in the patent compared to a claim in the application; and (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue would have been an obvious variation of the invention defined in a claim in the patent. (See MPEP § 804). The instant claim 12 is for a vegetable oil based polyol.

Claim 3 of '097 takes a similar vegetable oil based polyol, reacts it with an isocyanate to form a polyurethane. This polyurethane is dispersed in a continuous aqueous phase. The claims are for two patently distinct different products. The Examiner has not provided any reasoning for why person of ordinary skill in the art would conclude that the invention defined in the claim at issue (the polyol) would have been an obvious variation of the invention defined in a claim in '097 (an aqueous dispersion of polyurethanes made by reacting a polyol with an isocyanate). Withdrawal of the rejection is respectfully requested.

**New Claims**

New claims 45-52 have been added by the Applicant. Support for these new claims can be found in the claims as originally filed, and in US Provisional Application number 60/465,663 and the copending non-provisional application (PCT/US2004/012427) claiming priority therefrom, both of which are incorporated by reference into the instant application. In order for the specification to reflect this incorporated by reference subject matter, the Applicant has added two paragraphs to the specification. Support can for example be found in PCT/US2004/012427 on page 6, line 30, - page 7, line 11, and page 8, lines 16-18.

Having addressed all issues set out in the Office Action, the Applicant respectfully submits that the claims are in condition for allowance and respectfully request that the claims be allowed.

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Respectfully submitted,

By /Lars Olav Husebo Reg. #60,965/
Lars Husebo
Registration No.: 60,965
THE DOW CHEMICAL COMPANY
2040 Dow Center
Midland, Michigan 48674
Telephone: (979) 238 - 3660
Attorney for the Applicant